IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 105 of 1993.
Reserved on 30.10.2007.

Date of Decision: November 8 ,2007.

State of H. P. Appellant.

Versus

Shiv Kumar alias Shivji and others. Respondents.

Coram

Hon'ble Mr. Justice Surjit Singh, J.

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]? No.

For the appellant	**:**	**Mr. S.D. Vasudeva, Addl. Advocate General with Mr. D.S. Nainta, Dy. Advocate General.**
For the respondents	**:**	**Mr. B.B. Vaid, Advocate, for respondent No.1.**
	:	**Mr. Naresh Thakur, Advocate, for respondents No.2 to 4.**

SURINDER SINGH, J.

Respondents were tried and acquitted for the offences punishable under Section 376, 506 read with Section 34 of the Indian Penal Code and their acquittal has been assailed in the instant appeal on law and facts.

In brief, the prosecution story is that on 29-3-1991, in the evening, the prosecutrix had gone to put the grass to the buffalo in her cattle shed where respondent Rajesh Kumar came to her and engaged her in talks and took her to the room of local Primary School Building and thereafter removed her salwar and committed rape. It was further alleged that the respondent Shiv Kumar, Banarsi Dass, and Ranjit Singh also raped her turn by turn and threatened her to life if she would make hue and cry. In the meanwhile, some 'Muhalawalas' collected on the gate of the school

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[1] Whether reporters of the Local papers are allowed to see the judgment? Yes.

building. The prosecutrix was bolted by the respondents inside and threatened her not to divulge anything to anyone. The prosecutrix did not divulge anything to any one due to the fear and directly made a way to her home.

The rumour spread all over regarding the said incident and it also appeared in some news paper. It was there after, the prosecutrix is alleged to have disclosed about the incident to her father on 8.4.1990. Her father Parkash Chand accompanied by her met PW11 Rulia Ram, A.S.I. on the way, while going to the Police Station. Accordingly, she made the statement Exhibit PA to him under Section 154 of the Code of Criminal Procedure on the basis of which formal FIR Exhibit PJ was recorded in Police Station, Una. The Police took into possession the shirt (Ext. P1) and salwar (Ext. P2) of the prosecutrix vide memo Exhibit PB. She was medically examined by Dr. (Mrs.) S. Chauhan and was also referred for ascertaining her skeletal age. In the opinion of the Doctors, the prosecutrix was aged between more than 14 years and less than 16 years. The report is Exhibit PE. Police took into possession the birth certificate Exhibit PC from the Headmaster of the School (PW4) and Exhibit PD from Sarpanch Ram Kishan (PW5) of Gram Panchayat, Mailman, depicting her date of birth as 2.8.1976. The respondents were arrested and were medically examined. They were found capable of performing sexual intercourse. The shirt and salwar were sent for Chemical Examination along with the vaginal swab taken by the lady Doctor for analysis in order to find out the semen or blood stains. No such thing was detected as per the report of the Forensic Science Expert.

After completing the investigation of the case, challan was presented in the Court for the trial of the respondents. They were charge-sheeted under the aforesaid sections to which they pleaded not guilty and claimed trial.

To prove its case, the prosecution examined eleven witnesses and the respondents were also examined under Section 313 of the Code of Criminal Procedure. Each of them denied the circumstances which were found attendant upon them and pleaded their innocence. According to Ranjit Singh respondent, (Police constable), it was a false case against him because at the relevant time he was not at Santokhgarh where the alleged incident is alleged to have taken place but he was a member of Police petrol party at Mehatpur. No defense evidence was led by the respondents, when called upon to do so.

After hearing the learned counsel for the parties and upon going through the evidence on record, the learned trial Court had acquitted the respondents on the following grounds that:-

(i) Baldev Chand (PW3) one of the persons who had gathered outside the School gate at the time of the alleged incident did not support the case of the prosecution. According to him nothing had happened in his presence. Similarly, PW2 Parkash Chand, father of the prosecutrix, had denied the disclosure of the alleged occurrence to him by the prosecutrix.

(ii) The prosecutrix had given a different version in her statement Ex. PA but when examined in the Court totally exonerated Rajesh Kumar aforesaid and gave a different version, making her version doubtful.

(iii) The prosecutrix in her cross-examination admitted that her house was in the mohalla where there are many houses. Her cattle shed was at a distance of about 500 mtrs adjacent to Vishav Karma Mandir.

Her father had a shop on the back side of the cow-shed and a school where she is alleged to have been raped, is situated within the same mohalla. The Police Post was also stationed nearby. Her house was situated nearer to the School and on the way to the cow shed. In such a situation, her testimony became un-believable that she was fraudulently taken by the respondents through densely populated places;

(iv) The other circumstance which weighed with the trial court was that the main gate of the school was closed and surrounding walls were about six to seven feet in height as admitted by the prosecutrix. She scaled the wall, with the support of the respondents and got inside the School building with the help of the respondents, in a thickly populated area. She did not object nor raised any alarm.

(v) The prosecutrix did not disclose immediately about the occurrence to Police or any one including her father or any of the family members. She even continued attending the School even on 6.4.1991.

(vi) The prosecutrix is alleged to have handed over to the Police the same clothes which she was wearing on the day of alleged incident and were not washed. She deposed that these were blood stained but no such stains were found on forensic examination which also falsified her version.

(vii) Report Exhibit DA which was admitted to be correct by PW9 HC Virender Kumar pertaining to a

> gambling case which reads that on 29.3.1991 at about 7.45 P.M. Ranjit Singh constable (respondent) along with other police constables was present at Mehatpur and they detected the commission of an offence punishable under the Gambling Act but according to her statement Exhibit PA, the prosecutrix had left her house around 7.00 P.M. on the same day to her cow shed, makes the presence of Ranjit Singh at the alleged place of occurrence suspicious.

We have heard the learned counsel for the parties and have meticulously examined the evidence on record in order to find out whether the findings of the learned trial court are borne out from the record.

First of all, we shall take up the point whether the prosecutrix at the relevant time was a minor as alleged. In the instant case, her father Parkash Chand (PW2) did not say anything about her age. Viresh Kumar Saxena (PW4) is the Head Master of the Government Girls High School Santokhgarh. He had signed the certificate Exhibit PC regarding the date of birth of the prosecutrix on the basis of the entry in the school register, which was not made by him. According to him, there was no certificate on record on the basis of which it was entered in the register.

The next witness is Ram Kishan (PW5) Sarpanch of Gram Panchayat Mailman. He had issued the certificate Exhibit PD in respect of the prosecutrix showing her date of birth as 2.8.1976. In the cross-examination he has stated that birth and death registers are kept and maintained by the Chowkidars which are deposited in the Police Station. He had no specific authority to issue such certificate regarding the date of birth. The original register was not produced by him to know, who was the

informant and when the entry was made. Therefore, his testimony in the above context cannot be relied upon.

The another witness is Dr. Gurcharan Singh (PW6) who had ascertained the skeletal age of the prosecutrix between 14 to 16 years as per his report Exhibit PE, but he has admitted variation in determination of the skeletal age ± two years either way. In that event, the age of the prosecutrix comes to 18 years, i.e, the age of her discretion.

Thus, the aforesaid evidence makes it a doubtful case of minority of the prosecutrix. Therefore, we are not in agreement with the trial court that the prosecutrix was proved to be less than 16 years of age. From the above evidence, her age comes to more than 18 years.

Now the question arises, whether the prosecutrix was subjected to sexual intercourse as alleged. For that her own statement requires to be properly scrutinized. It is apparent from the record that the prosecutrix did not complain to any one about the incident for about nine days. Where the alleged incident took place was an inhabited area. As usual, she had been attending the School. The Police Station was also located within the town. Police came into action on a news item which appeared in the local Daily. Initially she made the allegation of rape against Rajesh Kumar respondent in her statement Ex. PA, and also alleged that after him other respondents committed the sexual intercourse turn by turn with her, but on her examination in the Court, on oath, she totally exonerated Rajesh Kumar and gave a different sequence of events with respect to the commission of crime.

PW3 Baldev Chand, a person from the crowd alleged to have gathered on the gate of the building did not support her version. When the alleged occurrence was published in the news paper, according to her, a Thanedar came to her house to verify the matter, on this her father PW2 enquired about the incident from her, it was at that time she had narrated

the entire story to him, thereafter her father took her to Mehatpur. Thanedar accompanied them where the report Exhibit PA was recorded in the Police Station, but the statement of her father Parkash Chand (PW2) is quite converse. According to him, on the basis of the news item that a girl was sexually assaulted in the School, some CID officer visited him and told that he along with his daughter were required in the Police Post. He (PW2) did not enquire about the authenticity of news paper report from the prosecutrix nor she had told anything to him. It was on the inquiry of the prosecutrix by the police that she narrated the incident to Police.

Further the document Ex. DA placed and proved on the record reveals that on the day of alleged incident the respondent Ranjeet Singh was present in a raiding party at Mehatpur at 7.45 P.M. which is at a distance of about 12 km from the police station and the place of alleged incident is 18 km as per FIR Ex. PJ, whereas the occurrence in the instant case is alleged to have taken place between 7.00 to 8.00 P.M which further makes the prosecution story quite doubtful.

Thus on the legal scrutiny of the evidence we do not find the version of the prosecutrix reliable nor it is corroborated in material particulars. Therefore it cannot be relied upon.

In the above circumstances and for the aforesaid reasons, we are of the opinion that the grounds for acquittal recorded by the trial court are borne out from the evidence on record, hence no interference is required in the impugned judgment of acquittal. Accordingly the appeal is dismissed.

(Surjit Singh),J.

November 8 ,2007 (Surinder Singh),J.
(bm)